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EXHIBITS:

----- *INVESTIGATIVE SUMMARY* -----

On April 25, 2010, Subjects Garcia and [redacted] were assigned to work together in Lancaster Station patrol unit 112D / Day Shift. Subject [redacted] had just been assigned to Lancaster Station and was beginning the [redacted] Program. Subject Garcia was a patrol certified deputy, but was not a [redacted].

At 1040 hrs, Lancaster Station received a disturbance call (LAN10115-0191). The call was subsequently upgraded to an "Assault - Just Occurred" call. Deputy Scott (Unit 112/D) was the first deputy to arrive and was ultimately assigned as the "Handling Unit". Deputy Scott subsequently made records in the Mobile Digital Communications System (MDCS) that he had made an arrest [redacted] and that he requested an URN number corresponding to a Felony Assault (Statistical Code 053).

Subjects Garcia and [redacted] were subsequently assigned as an assisting unit. They reported their arrival at the scene approximately 36 minutes after the arrest.

Subject Garcia and Deputy Scott discussed the handling of the call. Subject Garcia was working a double shift (Days and PMs) while Deputy Scott was scheduled to end his shift at 1400 hrs. Subject Garcia offered to "buy the report" so that Deputy Scott could get off work on time, and with the understanding that he (Subject Garcia) would be able to complete the report on the PM shift if necessary.

Subject Garcia later explained that he also felt obligated to make this offer because he believed that more tenured deputies would view him poorly if he did not "buy the report".

Subject Garcia then dictated the content of the report to Subject [redacted] who wrote the report. Subject Garcia stated that he chose the words contained in the report and that Subject [redacted] recorded those words at his direction.

Subjects Garcia and [redacted] then prepared a report that described: 1) the arrest of the suspect, 2) the seizure of evidence, 3) the subsequent interview of two witnesses, 4) the interview of the suspect and, 5) the booking of evidence. The report described these actions as being taken by Subjects Garcia and [redacted] Investigation revealed that majority of these actions, except for the booking of the evidence, were actually taken by Deputy Scott.

Subject Garcia explained that he prepared the "Substituted Content" report because he believed that Deputy Scott would be required to prepare a supplemental report describing his (Deputy Scott's) actions and because he feared that a reviewing sergeant would not approve of him documenting the volume of action taken by Deputy Scott.

Subject Garcia stated that the deception in the report was limited to the identification of the actions taken by Deputy Scott as being taken by himself and Subject [redacted] He stated

that report correctly described the conduct of the suspect. He additionally stated that the deception in the report did not alter the degree of criminal liability of the suspect.

Subject Garcia stated that Subject [redacted] did not object to writing the false statements in the report. Subject [redacted] stated that she asked Subject Garcia if they should be writing the report "this way" and that Subject Garcia replied "it's fine."

The report was then submitted to Sergeant Mark Machanic who approved it.

Subject [redacted] received a court subpoena on April 28, 2010. She believed that she could not testify to the content of the report. She then telephoned Deputy Scott and discussed the content of the report with him. Deputy Scott later stated that this was the first time he learned of the substituted content in the report. He referred this to the handling detective (Deputy Morrow). The report content issues were then referred to the command staff and ultimately resulted in the conduct of an investigation by the Internal Criminal Investigation Bureau (ICIB).

ICIB investigators conducted interviews of all parties, except for the original assault suspect (who could not be located) and Subject Garcia (who exercised his right not to be interviewed).

The ICIB investigation was concluded. That investigative report is incorporated into this administrative investigation.

The ICIB investigative report was presented to the District Attorney's office for filing consideration. The case was reviewed by Deputy District Attorney Jason Lustig. Mr. Lustig declined to file criminal charges. His "Declination Memorandum" addressed the liability of both subjects to prosecution for a violation of Penal Code section 118.1 (Filing a False Police Report). Mr. Lustig cited two issues that were responsible for his declining to file charges:

- The charge required the "union of act and wrongful intent". Mr. Lustig believed that it could not be shown beyond a reasonable doubt that the subjects had a wrongful intent. He noted that the report accurately described the conduct of the suspect and there was no embellishment of the suspect's criminal liability.

- The charge requires that the false information be "material". The test is "whether it was probable that the misrepresentation would influence the outcome of the criminal proceedings to the detriment of the subject of the false report, i.e. the assault suspect." Mr. Lustig noted "nothing about the misrepresentations in the deputies' report was contrary to the interests of the assault suspect."

The matter was then referred for the completion of an Administrative Investigation.

Subject Garcia was interviewed on October 25, 2011. He made statements as reported above (reported in the chronological order of events - for clarity of presentation). He also provided the following information:

- He has not received any training or instruction that caused him to prepare the "Substituted Content" report.

- He has not authored any other "Substituted Content" report.



Leroy D. Baca, Sheriff

County of Los Angeles

Sheriff's Department Headquarters

4700 Ramona Boulevard
Monterey Park, California 91754-2169



June 7, 2012

Deputy Abner Garcia, #[redacted]

Dear Deputy Garcia:

You are hereby notified that it is the intention of the Sheriff's Department to discharge you from your position of Deputy Sheriff, Item No. 2708A, with this Department, effective the close of business June 28, 2012.

An investigation under IAB File Number 2268064, conducted by Lancaster Station, coupled with your own statements, has established the following:

1. That in violation of Manual of Policy and Procedures Section 3-01/050.10, Performance to Standards, on or about April 25, 2010, while on duty, you failed to conform to the work standards established for your rank and position, as evidenced by, but not limited to:

   a) failing to accurately document the circumstances under which a suspect had been arrested for assault with a deadly weapon, and/or;

   b) directing a newly assigned deputy, in a training status, to place inaccurate information into an arrest report, and/or;

   c) failing to properly document the "chain of custody" for evidence seized during the arrest.

2. That in violation of Manual of Policy and Procedures Sections 3-01/100.35, False Information in Records; and/or 3-01/050.10, Performance to Standards, on or about April 25, 2010, while on duty, you directed and/or dictated the preparation of an arrest report containing several intentionally falsified statements, as evidenced by, but not limited to:

a) dictating and/or documenting actions being taken by you and/or Subject Boissier regarding the arrest of the suspect when those actions were of another deputy, and/or;

b) dictating and/or documenting actions being taken by you and/or Subject Boissier regarding the seizure of evidence when those actions were of another deputy, and/or;

c) dictating and/or documenting actions being taken by you and/or Subject Boissier regarding the interviews of two witnesses when those actions were of another deputy, and/or;

d) dictating and/or documenting actions being taken by you and/or Subject Boissier providing Miranda admonishment to the suspect, and/or obtaining waivers, and/or statements from the suspect when those actions were of another deputy.

3. That in violations of Manual of Policy and Procedures Sections 3-01/050.10, Performance to Standards; and/or 3-01/100.35, False Information in Records, on or about April 25, 2010, while on duty, you falsely reported and/or recorded your arrival to the scene of an assault call (LAN10115-0191) using the "10-97" key of his Mobile Digital Terminal when you had actually responded to Lancaster Station to handle the call. You later wrote in the arrest report that you responded to the scene.

Additional facts and grounds for this decision are set forth in the Disposition Worksheet, Investigative Summary and Investigative Packets which are incorporated herein by reference.

You may respond to the intended action orally or in writing. In the event that you choose to respond orally to these charges, you have already been scheduled to meet with Chief Neal B. Tyler, on June 26, 2012, at 1400 hours, in his office, which is located at Sheriff's Headquarters Building, 4700 Ramona Blvd. Room 435, Monterey Park, California 91754. If you are unable to appear at the scheduled time and wish to schedule some other time prior to June 26, 2012, at 1400 hours, for your oral response, please call Chief Tyler's secretary at [redacted] for an appointment.

If you choose to respond in writing, please call Chief Tyler's secretary to cancel your scheduled appointment, and send your response to the facts contained in this letter to Chief Tyler's office by no later than June 26, 2012.

Unless you are currently on some other type of authorized leave, pursuant to Rule 16.01 of the Los Angeles County Civil Service Commission Rules, effective immediately, you are on paid administrative leave which will continue during the fifteen (15) business days you have to respond to the intended discharge or until the conclusion of your pre-disciplinary

hearing. If you are presently on an authorized leave, that leave will continue during the fifteen (15) business days you have to respond to the intended discharge, or until the conclusion of your pre-disciplinary hearing.

Failure to respond to this Letter of Intent within fifteen (15) business days will be considered a waiver of your right to respond and will result in the imposition of the discipline indicated herein.

If you did not receive the investigative material on which your discipline is based at the time you were served with this correspondence, you may contact the Internal Affairs Bureau at (323) 890-5300, to obtain a copy of the case file.

The Sheriff's Department reserves the right to amend and/or add to this letter.

Sincerely,

LEROY D. BACA, SHERIFF

John H. Clark, Captain
Internal Affairs Bureau

Note: Attached for your convenience are excerpts of the applicable areas of the Manual of Policy and Procedures.

JHC:ah

c: Advocacy Unit
Employee Relations Unit
Chief Neal Tyler, Field Operations Region I
Internal Affairs Bureau
Office of Independent Review (OIR)
(File #2268064)

LOS ANGELES COUNTY DISTRICT ATTORNEY
CHARGE EVALUATION WORKSHEET

X FELONY MISDEMEANOR	AGENCY NAME LASD - INTERNAL AFFAIRS AGENCY FILE NO. (DR OR URN) 910-00025-2003-441	DA CASE NO. 31244687 DA OFFICE CODE J.S.I.D. 10-0958R	DATE 07/25/2011 VICTIM ASSISTANCE REFERRAL ☐ YES – NOTIFY VWAP ☐ NO

SUSP NO.	SUSPECT	CODE	SECTION	OFFENSE DATE	REASON CODE
1	NAME (LAST, FIRST MIDDLE)) GARCIA, ABNER NOE	PC	118.1	04/25/2010	B
	DOB [redacted] · SEX (M/F) M · BOOKING NO. · VIP -- Yes X No				
	___ Gang Member Name of Gang · ___ Victim Gang Member Name of Gang:				
	Victim Name: · Victim DOB:				
2	NAME (LAST, FIRST MIDDLE)) [redacted]	PC	118.1	04/25/2010	B
	DOB [redacted] · SEX (M/F) F · BOOKING NO. · VIP -- Yes X No				
	___ Gang Member Name of Gang · ___ Victim Gang Member Name of Gang:				
	Victim Name: · Victim DOB:				
3	NAME (LAST, FIRST MIDDLE))				
	DOB · SEX (M/F) · BOOKING NO. · VIP -- Yes -- No				
	Gang Member Name of Gang · ___ Victim Gang Member Name of Gang:				
	Victim Name: · Victim DOB:				

LAST NAME: GARCIA FIRST NAME: ABNER DA CASE NUMBER: 31244687

Comments

SEE ATTACHED.

COMPLAINT DEPUTY (print)	COMPLAINT DEPUTY (SIGNATURE)	STATE BAR NO.	REVIEWING DEPUTY (SIGNATURE)
JASON P. LUSTIG/smm	[signature]	132482	[signature]

I have conveyed all relevant information to the above-named Deputy District Attorney to be used in consideration of a filing decision.

FILING OFFICER (PRINT): SGT. AMY HANSON/L.A.S.D. FILING OFFICER (SIGNATURE): MAILED 07/27/11 SERIAL #: [redacted]

DEPARTMENT OF JUSTICE REASON CODES (FORM 8715)

A. Lack of Corpus
B. Lack of Sufficient Evidence
C. Inadmissible Search/Seizure
D. Victim Unavailable/Declines To Testify
E. Witness Unavailable/Declines to Testify
F. Combined with Other Counts/Cases
G. Interest of Justice
H. Other (indicate the reason in Comments section)
I. Referred to Non-California Jurisdiction
J. Deferred for Revocation of Parole
K. Further Investigation
L. Prosecutor Prefiling Deferral

DISTRICT ATTORNEY'S REASON CODES

M. Probation Violation filed in lieu of
N. Referred to City Attorney for Misdemeanor Consideration

DECLINATION MEMORANDUM

(This memorandum contains attorney work product, analysis and interpretation)

TO: JSID #10-0958

THROUGH: SERGIO GONZALEZ, Head Deputy
Justice System Integrity Division

FROM: JASON P. LUSTIG, Deputy District Attorney
Justice System Integrity Division

RE: Deputy Abner Garcia #[redacted]
Deputy [redacted] #[redacted]
Los Angeles County Sheriff's Department
File #910-00025-2003-441

DATE: July 20, 2011

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its examination of the allegations that Los Angeles County Sheriff's Department (LASD) Deputies Abner Garcia, Serial No. [redacted] and [redacted] Serial No. [redacted] committed the crime of filing a false police report in violation of Penal Code section 118.1. For the reasons set forth below, this office declines to initiate criminal proceedings against Deputies Garcia and [redacted]

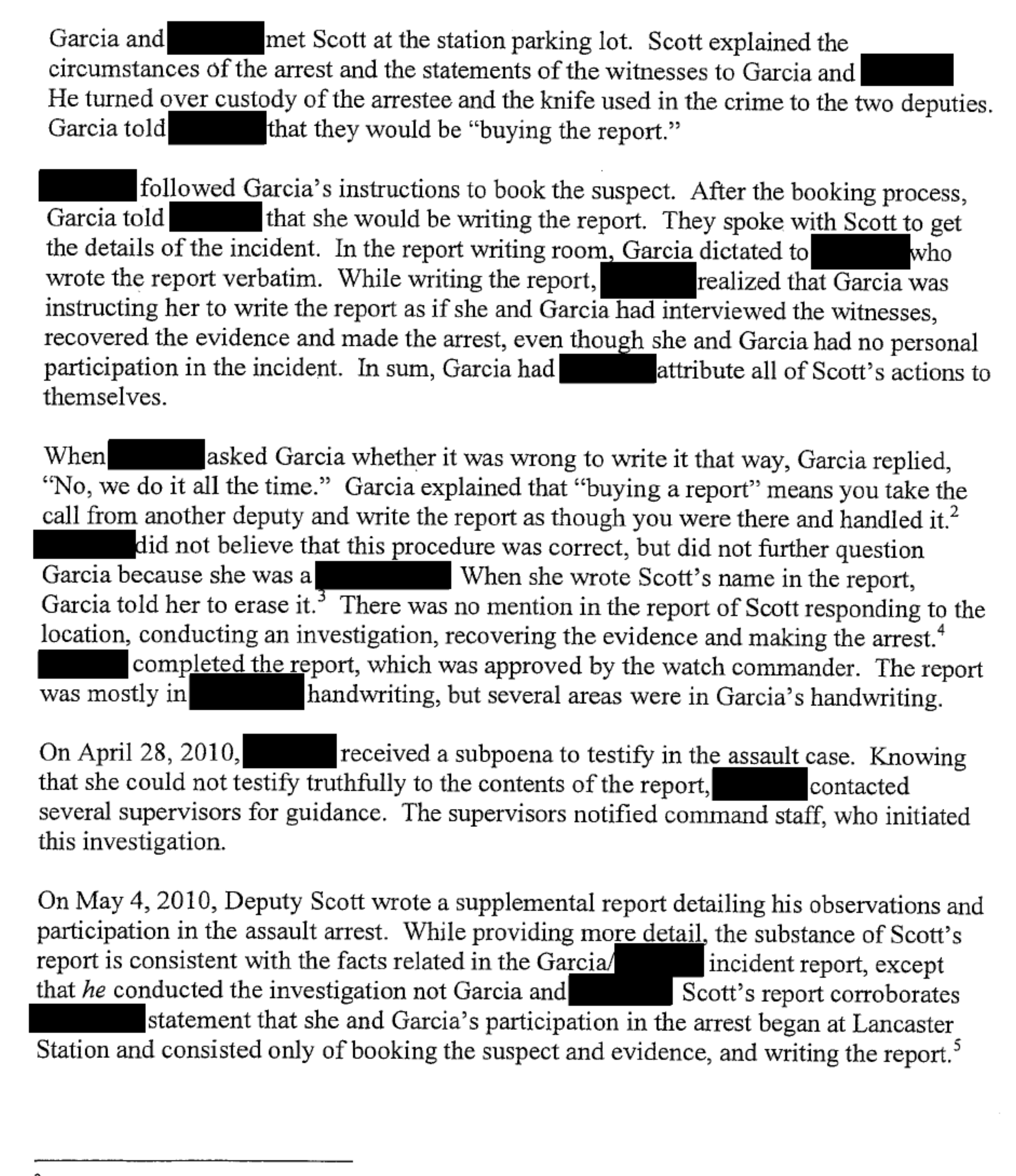
The following analysis is based upon investigative reports, with attachments, which were prepared and submitted to this office by LASD Internal Criminal Investigations Bureau (ICIB) Sergeant Amy Hanson. Compelled statements from Deputies Garcia and [redacted] if any exist, were not considered as part of this analysis.

FACTUAL ANALYSIS

April 25, 2010 was Deputy [redacted] first day of [redacted] at LASD's Lancaster Station. She was assigned to work with Deputy Abner Garcia.[1]

During the day, Deputy Christian Scott, also assigned to patrol at Lancaster Station, made an arrest for assault with a knife. Nearing the end of his shift and mindful of budget constraints, Scott asked Garcia if he and [redacted] would book the arrestee. To assist with [redacted] Garcia agreed to "take the handle" on the arrest, i.e. take over the booking and report writing duties for the arrest.

[1] Garcia was not a certified [redacted] He was hired on May 24, 2006.



Garcia and [redacted] met Scott at the station parking lot. Scott explained the circumstances of the arrest and the statements of the witnesses to Garcia and [redacted] He turned over custody of the arrestee and the knife used in the crime to the two deputies. Garcia told [redacted] that they would be "buying the report."

[redacted] followed Garcia's instructions to book the suspect. After the booking process, Garcia told [redacted] that she would be writing the report. They spoke with Scott to get the details of the incident. In the report writing room, Garcia dictated to [redacted] who wrote the report verbatim. While writing the report, [redacted] realized that Garcia was instructing her to write the report as if she and Garcia had interviewed the witnesses, recovered the evidence and made the arrest, even though she and Garcia had no personal participation in the incident. In sum, Garcia had [redacted] attribute all of Scott's actions to themselves.

When [redacted] asked Garcia whether it was wrong to write it that way, Garcia replied, "No, we do it all the time." Garcia explained that "buying a report" means you take the call from another deputy and write the report as though you were there and handled it.[2] [redacted] did not believe that this procedure was correct, but did not further question Garcia because she was a [redacted] When she wrote Scott's name in the report, Garcia told her to erase it.[3] There was no mention in the report of Scott responding to the location, conducting an investigation, recovering the evidence and making the arrest.[4] [redacted] completed the report, which was approved by the watch commander. The report was mostly in [redacted] handwriting, but several areas were in Garcia's handwriting.

On April 28, 2010, [redacted] received a subpoena to testify in the assault case. Knowing that she could not testify truthfully to the contents of the report, [redacted] contacted several supervisors for guidance. The supervisors notified command staff, who initiated this investigation.

On May 4, 2010, Deputy Scott wrote a supplemental report detailing his observations and participation in the assault arrest. While providing more detail, the substance of Scott's report is consistent with the facts related in the Garcia/[redacted] incident report, except that *he* conducted the investigation not Garcia and [redacted] Scott's report corroborates [redacted] statement that she and Garcia's participation in the arrest began at Lancaster Station and consisted only of booking the suspect and evidence, and writing the report.[5]

---

[2] During this investigation, other deputies acknowledged that "buying a call" was a term used for the practice of taking over another deputy's investigation, but that it did not include exchanging investigative roles in the reports.

[3] Deputy [redacted] was in the report writing room at the same time. He heard Garcia telling [redacted] "what to write verbatim." Garcia had [redacted] change things in the report.

[4] When interviewed, Scott said that he had no idea that his name had been left out of the report or that the deputies had written the report as if they had handled the investigation.

[5] On April 26, 2010, before the issue with the Garcia/[redacted] report arose, Detective Harold Morrow interviewed the two victims in the assault case. Their statements to him were consistent with both Scott's supplemental report and the Garcia/[redacted] incident report.

LEGAL ANALYSIS

Filing a False Police Report

Penal Code section 118.1 provides that "Every peace officer who files any report with the agency which employs him or her regarding the commission of any crime or any investigation of any crime, if he or she knowingly and intentionally makes any statement regarding any material matter in the report which the officer knows to be false . . . is guilty of filing a false report."

There is no doubt that Garcia instructed [redacted] to write a report in which they incorrectly reported that they had conducted the investigation of the assault incident. However, to prove the crime of filing a false police report, the law requires proof of the union of act and *wrongful intent*. California Criminal Jury Instructions (CALCRIM) 250 and 251. Apart from the misrepresentation as to who conducted the investigation, the deputies' report accurately portrayed the facts of the crime as set forth in the supplemental reports authored by Deputy Scott and Detective Morrow. The deputies did not alter the facts of the crime committed by the suspect as reported to them verbally by Deputy Scott. There is no evidence that they attempted to embellish their report in order to make the criminal case against the suspect stronger. Garcia appeared to be under the serious misapprehension that by "buying" Scott's call, it was standard operating procedure to write the report as though they conducted the investigation. Boissier, in turn, was clearly uncomfortable with the manner in which Garcia was instructing her to write the report and reported the issue to her supervisors as soon as the reality of having to testify confronted her. It is hard to imagine any benefit that the deputies intended to receive by misrepresenting their roles in the arrest other than, ironically, helping with [redacted] As a result, we find that there is insufficient evidence to prove beyond a reasonable doubt that the acts of Garcia and [redacted] demonstrated the necessary criminal intent required to prove the crime of filing a false report.

In addition, knowingly providing false information in a police report does not constitute a violation of Section 118.1 unless that information is deemed to be "material." Accordingly, the issue becomes whether the misrepresentation in the Garcia/[redacted] report that they had conducted the investigation was "material" within the meaning of Penal Code section 118.1.

There are no reported cases interpreting the meaning of the term "material" as used in Section 118.1. However, "material" is defined in closely related Penal Code section 118 (perjury). In providing the elements of perjury, CALCRIM 2640 defines information as being material "if it is probable that the information would influence the outcome of the proceedings, but it does not need to actually have an influence on the proceedings."

Certainly, the misrepresentation in the report that Garcia and [redacted] had conducted the investigation, as opposed to Deputy Scott, was important information. It is also probable



CIVIL SERVICE COMMISSION
COUNTY OF LOS ANGELES

July 23, 2014

FINAL COMMISSION ACTION

Subject of Hearing: *Petition of* ***ABNER GARCIA*** *for a hearing on his* **discharge**, *effective August 13, 2012, from the position of Deputy Sheriff, Sheriff's Department,* **Case No. 12-265**.

The Civil Service Commission, at its meeting held on July 16, 2014, approved findings in the above-entitled case. The petitioner's objections were overruled.

Since a copy of these findings has already been provided to all the parties, we have enclosed a copy of the signed formal order of the Commission for your records.

Anyone desiring to seek review of this decision by the Superior Court may do so under Section 1085 or 1094.6 of the Code of Civil Procedure as appropriate. An action under Section 1094.6 can only be commenced within 90 days of the decision.

Lawrence D. Crocker
Executive Director

Enclosure

c: Abner Garcia
Dale Nowicki
Vincent McGowan
Jennifer Gardner

BEFORE THE CIVIL SERVICE COMMISSION OF THE

COUNTY OF LOS ANGELES

In the matter of the ***discharge****, effective August 13, 2012, from the position of Deputy Sheriff, Sheriff's Department, of* **ABNER GARCIA** **(Case No. 12-265)**	ORDER OF THE CIVIL SERVICE COMMISSION

On July 16, 2014, the Civil Service Commission of the County of Los Angeles overruled the petitioner's objections and adopted as its final decision the findings and recommendation of the Hearing Officer, Jennifer Gardner, to sustain the Department. (No one appeared for the petitioner).

Dated this 23rd day of July, 2014.

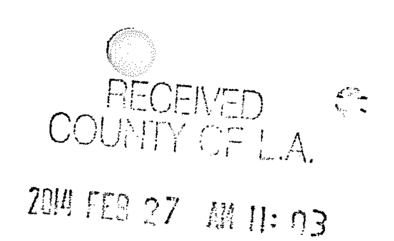
Evelyn V. Martinez

EVELYN V. MARTINEZ, President

JOHN DONNER, Member

CAROL FOX, Member

Z. GREG KAHWAJIAN, Member



LOS ANGELES COUNTY CIVIL SERVICE COMMISSION

In the Matter of the Appeal of	)	CASE NO. 12-265
	)	
ABNER GARCIA	)	PROPOSED FINDINGS OF FACT,
	)	CONCLUSIONS OF LAW AND
Appellant,	)	RECOMMENDATION
	)	
And	)	
	)	
LOS ANGELES COUNTY SHERIFF'S	)	
DEPARTMENT	)	
	)	
Respondent.	)	
	)	

APPEARANCES

For the Appellant:
Dale G. Nowiki
Green & Shinee
16055 Ventura Blvd., Suite 1000
Encino, CA 91436

For the Respondent:
Vincent C. McGowan
Hausman & Sosa, LLP
18757 Burbank Blvd., Suite 305
Tarzana, CA 91356-6329

Hearing Officer: Jennifer B. Gardner, Esq.
Hearing Dates: December 6 and 18, 2013

ISSUES

1. **Are the facts stated in the letter of imposition true?**
2. **If any or all are true, is the discipline appropriate?**

EXHIBITS

The Department and Appellant's exhibits are summarized on attachments "A" and "B," respectively.

INTRODUCTION

Appellant, Abner Garcia ("Appellant") was discharged from the position of Deputy Sheriff effective August 13, 2012. Appellant was a six -year employee with the Department. The discharge stems from an on-duty incident which occurred on April 25, 2010. Appellant was discharged for knowingly and intentionally placing false statements in an official document by instructing a [redacted] on her first day [redacted] to write the report in the first person when in fact he and the [redacted] were not at the scene and did not do the actions documented in the report.

Appellant was discharged for the following policy violations:

1. The Department's Manual of Policies and Procedures §3-01/050.10, Performance to Standards, on or about April 25, 2010 by doing the following things:

a. Failing to accurately document the circumstances under which a suspect had been arrested for assault with a deadly weapon; and/or

b. Directing a newly assigned deputy, [redacted] to place inaccurate information into an arrest report; and/or

c. Failing to properly document the chain of custody for evidence seized during the arrest.

2. The Department's Manual of Policies and Procedures §3-01/100.35, False Information in Records, and/or §3-01/050.10 Performance to Standards, on or about April 25, 2010, while on duty, Appellant directed and/or dictated the preparation of an arrest report containing several intentionally falsified statements as evidenced by, but not limited to:

a. Dictating and/or documenting actions as being taken by him and/or Deputy [redacted] regarding the arrest of the suspect when those actions were of another deputy; and/or

b. Dictating and/or documenting actions as being taken by him and/or Deputy [redacted] regarding the seizure of evidence when those actions were of another Deputy; and/or

c. Dictating and/or documenting actions as being taken by Appellant and/or Deputy [redacted] regarding the interviews of two witnesses when those actions were of another Deputy; and/or

d. Dictating and/or documenting actions as being taken by Appellant and/or Deputy [redacted] regarding the providing of the Miranda admonishment to the suspect, and/or obtaining waivers, and/or statements from the suspect, when those actions were of another deputy.

3. The Department's Manual of Policy and Procedures, §3-01/050.10, Performance to Standards; and/or §3-01/100.35, False Information in Records, when while on duty on April 25, 2010, Appellant falsely reported and/or recorded his arrival to the scene of an assault call using the "10-97" key of his mobile digital terminal when he had actually responded to Lancaster Station to handle the call. Appellant later wrote in the arrest report that he had responded to the scene when in fact he had not.

EVIDENCE

On April 25, 2010, Deputy Christian Scott worked day shift out of Lancaster Station, assigned to patrol. He responded to an ADW (assault with a deadly weapon) call. He went to the scene, made initial contact with the victim and suspect, conducted the investigation, and arrested the suspect. The victim had been stabbed with a knife. Deputy Scott recovered the knife. He took pictures, spoke with possible witnesses, the victim and suspect. Deputy Scott transported the suspect to Lancaster Station. He then referred the call to Appellant and Deputy [redacted] for booking and report writing.

April 25, 2010 was Deputy [redacted] a patrol deputy. On that day, Deputy [redacted] was assigned to work with Deputy Garcia ("Appellant"). While on patrol, Deputy [redacted] and Appellant received a phone call from Deputy Christian Scott. Deputy Scott instructed them to meet him at the station to book the suspect and write the report for the ADW arrest he had just made. This procedure is called "buying a report." At the station, Deputy Scott told Deputy [redacted] to take notes as he told them what happened and everything he did at the scene. Deputy Scott let Appellant and Deputy [redacted] re-interview the suspect and book the knife into evidence. Thereafter, Deputy Scott transferred the matter over to them for the report writing, and went about the rest of his day.

Deputy [redacted] took the female suspect out of the backseat of Scott's patrol car, took her to the jail and booked her. After booking the suspect Deputy Scott went to the report writing room and began to write the report. She physically wrote the report but Appellant was responsible for its contents. Appellant stood over her and told her what

to write as she wrote it. He dictated the contents of the report in the **first person**, as if he and/or Deputy [redacted] had been to the scene, retrieved the evidence, interviewed the witnesses and made the arrest themselves.

Department's Exhibit ["DE"] 7 is the Incident Report. It is written in the first person. It states that Deputy [redacted] and Appellant responded to the scene and interviewed the witnesses (DE7, pp. 28-30). It sets forth two witness interviews that consistently recount how the victims had been stabbed by the suspect. (Ibid.) It states that Deputy Garcia asked the suspect where the knife was, and then retrieved the knife. (Id., p.33) The incident report states that "both victims stated that they are not desirous [sic] of prosecution...." (See DE 7, p. 33) It further states, "I booked the knife" into evidence. (Id., p. 34) Deputy [redacted] name is at the top of the Crime Analysis Supplemental Form, Suspect/Subject Information. (Id. P. 35) Deputy [redacted] lists herself on the Probable Cause Declaration. (Id., p. 39) Deputy Garcia is listed as the person who Mirandized the suspect (Id., p. 31) Deputy [redacted] is listed as the "Searching Officer, on the Booking and Property Record, which also lists Deputy Scott as the arresting and Transporting Officer. (Id., p. 37)

As she was writing the report, Deputy [redacted] asked Appellant if she should be writing the report in the first person as if they were at the scene. She asked that question because they had not been at the scene, did not read the suspect his rights, and did not conduct the investigation.

Appellant responded, "this is 'how we do it' here."

Deputy [redacted] continued to write what Appellant told her to write, with Appellant standing over her shoulder and watching as she wrote the report.

Deputy [redacted] tearfully testified that she did not challenge Appellant beyond asking him once if they were writing the report properly. She was trained in "unwritten patrol culture" that you are supposed to do what you are told and not to question a superior. She felt badly that she questioned Appellant at all about writing the report in the first person, although it concerned her.

Soon thereafter, Deputy [redacted] learned that a case had been filed when she was subpoenaed to testify. She immediately became concerned because she knew that she could not testify to the events in the report. She called Deputy Scott and explained that she had been subpoenaed in this case and was concerned that she had written report in the first person at Appellant's direction.

Deputy [redacted] believes that Appellant altered the report after she was finished writing it. Some of what she had written had been erased and something else had been written in its place. During the ICIB investigation, she noticed still more changes/erasures that had been made to the report. For example, she believed that Appellant had changed the words "Deputy Scott" to "Deputy Garcia and I." (See DE 20, pages 5 and 6)

While the Department's investigation ensued, Deputy [redacted] was [redacted]

[redacted] Appellant testified that he had previously "bought reports," in cases where he had been present at the scene, and where the other deputy filled in by writing a supplemental report. He also argued that the Department's report writing policy requires that reports be written in the first person. He admitted to directing Deputy [redacted] to write the report in the first person. There was no evidence presented that the report was bought from Deputy Scott due to budgetary cutbacks or to save money on overtime; rather, the testimony was that it was done in order to give Deputy [redacted] report-writing training.

Appellant thought there was a 50% chance the case would not be filed because the victims did not want to prosecute. This was a training exercise for Deputy [redacted] Appellant admitted that no one ever told him that it is acceptable to put false statements in a report.

Ultimately, the District Attorney's office declined to pursue the case, even though it allegedly involving a serious felony perpetuated against two victims.

2. The Decision Maker's Testimony

The Decision Maker in this case was Chief Jacques Anthony La Berge, assigned to North Patrol Division. Before he decided to discharge Appellant, he reviewed the administrative investigation and exhibits, the criminal complaint, the criminal arrest report, the witness interviews, and the performance history of the employees involved. He also reviewed the Department's guidelines for discipline prior to making his decision.

Based upon the seriousness of the allegations, all of which he found to be substantiated by the ICIB and IAB investigators, Chief La Berge concluded the discharge was appropriate. False statements by deputies violate the public trust. The public has

the right to expect that the Department is always trustworthy when presenting cases for prosecution. When the Department files false police reports which are placed into the criminal justice system, this undermines the Department and violates the public trust, ultimately impacting the Department's ability to perform its duties and the public's safety. Chief La Berge further noted that the report was inaccurate because it suggested that Miranda rights had been read by Appellant and Deputy [redacted] when in fact they had been ready by Deputy Scott. Further, the deputy who actually made the arrest was not even mentioned in the report. Were Appellant and Deputy [redacted] to be subpoenaed and required to testify that they did the arrest and the investigation when in fact they did not, they could have been charged with perjury.

Chief La Berge testified that the false statements in the report not only jeopardized the career of a new deputy, but significantly impacted the credibility of Appellant's future reports and tarnished forever his reputation as a Deputy Sheriff. His compromised integrity could undermine the District Attorney's successful prosecution in future cases he is involved in, and thereby undermine the Department's ability to do its job. This would render Appellant a "useless deputy" in future cases, as he would be placed on the District Attorney's "Brady list."

Appellant used poor judgment. He should not have disregarded Deputy [redacted] concern. Chief La Berge further explained the way that he treated Deputy [redacted] was "very problematic." Appellant violated the Department's Core Values.

DISCUSSION

1. Are the Allegations contained in the Department's letter of August 14, 2012 true?

The Department met its burden of proving by a preponderance of the evidence that the facts stated in the letter of intent are true.

2. If Any Or All Of The Facts In The Letter Of Intent Are True, Was The Discipline Appropriate?

The discipline was appropriate and discharge is necessary to prevent further or potential harm to the public service. Appellant's conduct was not simply a benign error in judgment or a miscalculation. Rather, it was the sinister hazing of a female deputy on her first day on the job. Appellant intentionally dictated that Deputy [redacted] write that she and Appellant were at the scene of an allegedly serious felony when in fact they were not. Even when Deputy [redacted] had the courage to ask Appellant if they should write the report in the first person when they were not at the scene, Appellant insisted that she continue to write the report in this fashion. Even after the completion of the report, he made further erasers and changes to the report to support his decision. None of his explanations made at the hearing or during the investigation explain or excuse his conduct. Appellant's conduct has forever tarnished his reputation as an honest peace officer. This has far-reaching consequences for the future reliability and trustworthiness of his police work. It could cause still more harm to the public service by compromising his investigative work and eyewitness accounts in future cases.

The Hearing Officer rejects Appellant's contention that this accident is a result of budgetary cut-backs and lack of training. Appellant had significant training and practical experience given his six years as a patrol deputy. He had received a Masters degree in Criminal Justice and several hours of training through the Department. Appellant's deceit and dishonesty discredits the Department and the criminal justice

system. It also compromised justice for the victim and the public safety (as a result of the way the report was written, the District Attorney's Office declined to file the case against the suspect), and caused an unnecessary career set-back for Deputy [redacted] who needlessly had to endure almost two years of uncertainty while she waited to be able to resume her duties.

When Appellant testified, he showed no remorse and he did not take responsibility for his actions. Rather than accept responsibility, he blamed (citing budgetary cutbacks, conflict between Department policy for report writing with how a report is written when deputies buy reports, and inadequate training) the Department for his actions. Appellant's effort to explain that he used the Mobile Digital Terminal consistent with his actual conduct were ineffective and immaterial given how the report was written. Appellant has demonstrated that he lacks integrity. The Department, the public and the judicial system can no longer trust or rely upon him. The discharge was appropriate.

FINDINGS OF FACT

1. At the time of his discharge, Appellant was permanently employed with the Los Angeles County Sheriff's Department.

2. On August 14, 2012, the Department discharged Appellant from service effective August 13, 2012.

3. On April 25, 2010, Deputy [redacted] was working her first day as a patrol deputy.

4. On April 25, 2010, Deputy Scott referred an ADW incident to Appellant and Deputy [redacted] for booking and report writing.

5. After booking the suspect at the Lancaster Station, Deputy [redacted] wrote the report under the direct supervision of Appellant who stood over her and told her what to write.

6. Appellant instructed Deputy [redacted] to inaccurately document in the first person the circumstances surrounding the arrest of the suspect by Deputy Scott.

7. Appellant instructed Deputy [redacted] to write that Deputy Garcia made the arrest, seized the evidence and Mirandized the suspect when all of these actions were done by Deputy Scott.

8. Appellant instructed Deputy [redacted] to write that she and Appellant responded to the scene and interviewed the suspect at the scene, when all of these actions were done by Deputy Scott.

9. Appellant instructed Deputy [redacted] to write that she interviewed the witnesses when all of these actions were done by Deputy Scott.

10. Appellant insisted that the report be written inaccurately, even when questioned by Deputy [redacted]

11. Appellant inaccurately documented himself as responding to the scene in his Mobile Digital Terminal when in fact he had not.

CONCLUSIONS OF LAW

1. Appellant violated the Department's Manual of Policies and Procedures §3-01/050.10, Performance to Standards by doing all of the following:

a. Failing to accurately document the circumstances under which the suspect had been arrested for assault with a deadly weapon;

b. Directing Deputy [redacted] who was in [redacted] to place inaccurate information into the arrest report;

c. Failing to properly document the chain of custody for the evidence consisting of a knife that was seized by Deputy Scott during the arrest.

2. Appellant violated the Department's Manual of Policies and Procedures §3-01/100.35, False Information in Records, and/or §3-01/050.10 Performance to Standards, by directing and dictating the preparation of the arrest report so that it contained several intentionally falsified statements.

3. Appellant violated the Department's Manual of Policies and Procedures §3-01/050.10 Performance to Standards, and/or §3-01/100.35, False Information and Records, when he falsely reported and/or recorded his arrival to the scene of an assault call using the "10-97" key of his mobile digital terminal when he had actually responded to Lancaster Station to handle the call.

4. Appellant violated the Department's Core Values.

5. The discipline imposed was reasonable and in accordance with both Civil Service Rule 18.031 and the Department's Guidelines for Discipline (see Department's Exhibit 18).

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RECOMMENDATION

The Hearing Officer finds that the Department's discipline is within the Department's policies, procedures and guidelines, and she recommends that the Commission sustain the Department's decision to discharge Appellant.

Respectfully submitted,

DATED: February 21, 2014

Jennifer B. Gardner, Hearing Officer



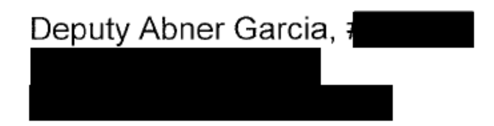
County of Los Angeles
Sheriff's Department Headquarters
4700 Ramona Boulevard
Monterey Park, California 91754-2169



LEROY D. BACA, SHERIFF

August 14, 2012

Deputy Abner Garcia, [redacted]



Dear Deputy Garcia:

On June 7, 2012, you were served with a Letter of Intention indicating your right to respond to the Sheriff's Department's pending disciplinary action against you, as reported under File Number IAB 2268064. You were also advised of your right to review the material on which the discipline was based.

You did exercise your right to respond. However, after review and consideration of the response submitted to support your position, it has been determined that the recommended discipline is appropriate.

You are hereby notified that you are discharged from your position of Deputy Sheriff, Item No. 2708A, with this Department, effective as of the close of business on August 13, 2012.

An investigation under File Number IAB 2268064, conducted by Lancaster Station, coupled with your own statements, has established the following:

1. That in violation of Manual of Policy and Procedures Section 3-01/050.10, Performance to Standards, on or about April 25, 2010, while on duty, you failed to conform to the work standards established for your rank and position, as evidenced by, but not limited to:

   a) failing to accurately document the circumstances under which a suspect had been arrested for assault with a deadly weapon, and/or;

b) directing a newly assigned deputy, in a training status, to place inaccurate information into an arrest report, and/or;

c) failing to properly document the "chain of custody" for evidence seized during the arrest.

2. That in violation of Manual of Policy and Procedures Sections 3-01/100.35, False Information in Records; and/or 3-01/050.10, Performance to Standards, on or about April 25, 2010, while on duty, you directed and/or dictated the preparation of an arrest report containing several intentionally falsified statements, as evidenced by, but not limited to:

a) dictating and/or documenting actions being taken by you and/or Subject [redacted] regarding the arrest of the suspect when those actions were of another deputy, and/or;

b) dictating and/or documenting actions being taken by you and/or Subject [redacted] regarding the seizure of evidence when those actions were of another deputy, and/or;

c) dictating and/or documenting actions being taken by you and/or Subject [redacted] regarding the interviews of two witnesses when those actions were of another deputy, and/or;

d) dictating and/or documenting actions being taken by you and/or Subject [redacted] providing Miranda admonishment to the suspect, and/or obtaining waivers, and/or statements from the suspect when those actions were of another deputy.

3. That in violations of Manual of Policy and Procedures Sections 3-01/050.10, Performance to Standards; and/or 3-01/100.35, False Information in Records, on or about April 25, 2010, while on duty, you falsely reported and/or recorded your arrival to the scene of an assault call (LAN10115-0191) using the [redacted] key of his Mobile Digital Terminal when you had actually responded to Lancaster Station to handle the call. You later wrote in the arrest report that you responded to the scene.

Additional facts and grounds for this decision are set forth in the Disposition Worksheet, Investigative Summary and Investigative Packet which are incorporated herein by reference.

In taking this disciplinary action, your record with this Department has been considered, and a thorough review of this incident has been made by Department executives, including your Unit and Division Commanders.

You may appeal the Department's action in this matter pursuant to Rules 4.02, 4.05 and 18.02 of the Civil Service Rules.

You may, if you so desire, within fifteen (15) business days from the date of service of this notice of discharge, request a hearing on these charges before the Los Angeles County Civil Service Commission, 222 North Grand Avenue, Los Angeles, California 90012.

The Sheriff's Department reserves the right to amend and/or add to this letter.

Sincerely,

LEROY D. BACA, SHERIFF

JACQUES A. LA BERGE, CHIEF
FIELD OPERATIONS REGION I

Note: Attached for your convenience are excerpts of the applicable areas of the Manual of Policy and Procedures and Civil Service Rules.

JAL:JHC:md

c: Advocacy Unit
Robert A. Jonsen, Captain, Lancaster Station
Internal Affairs Bureau
Office of Independent Review (OIR)
Kevin E. Hebert, Captain, Personnel Administration